Office-Supreme Court, U.S.
FILED
APR 1 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1301 (2)

In The
Supreme Court of the United States
October Term, 1984

JOHN C. AMIS, JR.,

Petitioner,

v.

DICK STEELE, Lee County Tax Collector, and LEE COUNTY, a political subdivision of the State of Florida,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION

GERALD W. PIERCE
Counsel of Record
HENDERSON, FRANKLIN,
STARNES & HOLT, P.A.
Post Office Box 280
Fort Myers, Florida 33902-0280
(813) 334-4121

KENNETH A. JONES
HUMPHREY, JONES & MYERS, P.A.
1625 Hendry Street
Fort Myers, Florida 33901
(813) 334-2722

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

BEST AVAILABLE COPY

13pp

QUESTIONS PRESENTED

Respondents disagree with the Petitioner's argumentative Statement of the Questions Presented. The Petitioner's first question is based upon a pre-trial stipulation entered by all of the parties pursuant to Court order prior to the filing of the motion for summary judgment. However, as noted by the Circuit Court, there was no genuine issue of material fact to preclude the entry of a summary judgment. Thus, it is the position of the Respondents that the first question listed by the Petitioner is not a question presented in this case and is based upon an inaccurate representation of the record.

As to the second question listed by the Petitioner, the Respondents restate the question in the following manner:

Where a litigant files a nuisance lawsuit against a County government, and where the record establishes that the County is entitled to a summary judgment because there is no genuine issue of material fact, is that litigant entitled to a detailed explanation for the ruling from the District Court, particularly in light of the fact that Fed. R. Civ. P. 52(a) specifically provides that findings of fact and conclusions of law are unnecessary with summary judgments?

TABLE OF CONTENTS

Page

Table of Authorities ii

Statement of the Case 1

Summary of Argument 5

Argument 6

Conclusion 10

TABLE OF AUTHORITIES

CASES:

Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970) 7

Church of Scientology v. Cazares, 638 F.2d 1272 (5th Cir. 1981) 9

Fromberg, Inc. v. Gross Mfg. Co., 328 F.2d 803 (9th Cir. 1964) 9

Hanson v. Aetna Life & Casualty Co., 625 F.2d 573 (5th Cir. 1980) 9

Vetter v. Frosch, 599 F.2d 630 (5th Cir. 1979) 7

RULES:

Fed. R. Civ. P. 52(a) 5

Fla. Admin. Code R. 12D-12.20 3

Gen. R.M.D. Fla. 3.06(c)(8) 4

STATEMENT OF THE CASE

Respondents disagree with the Statement in the Petition. There is no support whatsoever in the record for the first two paragraphs in the Petitioner's Statement. There is nothing in the record to indicate that the Petitioner's "public office money certificates" were intended to dramatize anything. There is nothing in the record to show that the Petitioner gave any notice that he submitted his "public office money certificates" in response to debts which were involuntarily acquired. As noted in the Circuit Court's unpublished opinion, Petitioner took an unqualified and unyielding position that payment of a debt in legal tender violates the United States Constitution (*See* R 43, 51). In the third paragraph of the Statement, Petitioner refers to a "three-inch file on Mr. Amis and a few other people. . . ." Although there is evidence in the record which indicates that a file exists, there is nothing to indicate that the file was anything more than a compilation of the papers which arose out of numerous attempts to pay taxes with "public office money certificates." The record does not contain even the slightest indication of any impropriety in the fact that the documents which were generated by the "public office money certificates" were placed in a file. The second sentence in the third paragraph of the Statement is not supported by the record in any way. The entire fourth paragraph in the Statement is similarly unsupported by the record in any way. The first full paragraph on page four of the Petition is an inaccurate representation of the facts. As noted in the Circuit Court's unpublished opinion, the Petitioner took the position that it was a violation of the United States Constitution to pay any debt in legal tender

(R 51). The Petitioner attempted to pay his real property taxes for forty individual parcels with his "public office money certificates." (R 41-52). Mr. Steele, as tax collector for Lee County, rejected the "public office money certificates" and offered to accept silver or gold coins in lieu of federal reserve notes (R 41, 42, 45, 46). Mr. Amis responded by retendering the "public office money certificates." (R 48). In his cover letter, the Petitioner asked Mr. Steele whether he supported the Constitution of the United States (R 48). With his letter, the Petitioner included an article from an unknown publication discussing the position taken by a municipal judge in Spearville, Kansas (R 49). The substance of the article was that the municipal judge found that a citizen could not be forced to pay his or her debts in federal reserve notes (R 49).

The Petitioner sent Mr. Steele a list of ten reasons as to why the "public office money certificates" should be accepted as payment (R 51). These reasons indicated that it was the Petitioner's position that the use of federal reserve notes was unconstitutional, and that he did not want to violate the Constitution in any way (R 51). Mr. Steele corresponded with the Florida Department of Revenue, requesting guidance as to the manner in which the matter should be handled (R 50). In response, the executive director of the Department advised Mr. Steele that the payment of taxes in any form other than legal tender is unacceptable (R 53-54). On March 17, 1982, Mr. Steele received a letter from the Petitioner advising that the Petitioner was taking legal action against the Department of Revenue in connection with his "public office money certificates." (R 55).

On the first day of the sale of tax certificates for parcels of real estate with unpaid real property taxes, the Petitioner and a friend who supported the Petitioner's position on federal reserve notes attended the sale (R 42). The Petitioner and his friend intended to purchase the tax certificates on each other's parcels at an interest rate of zero (R 87-88). While discussing the rules and regulations for the sale of tax certificates, Mr. Steele saw the Petitioner in the audience (R 42). He instructed his employees that the Petitioner would be required to make a deposit before he would be given a bid number (R 43, 66). The Petitioner was advised that a deposit would be required (R 31, 43, 66). Mr. Steele felt that the requirement was justified because of the Petitioner's prior attempts to pay taxes with his "public office money certificates." (R 43). The Petitioner objected to the requirement, but he actually made a deposit and bid on certificates (R 31). Although the Petitioner has repeatedly argued, and continues to argue, that a pre-bidding deposit may not be required, the tax collector is permitted to require a pre-bid deposit under Fla. Admin. Code R. 12D-12.20, wherein it is stated in relevant part:

> For good cause shown, the tax collector may require a prospective bidder to make a deposit prior to allowing the bidder to bid at the sale (R 14).

The deposit to which Petitioner refers in the first paragraph on page five applies only to post-bidding deposits. The good cause upon which Mr. Steele relied was the Petitioner's unqualified and unyielding position that payment of a debt in legal tender violates the Constitution of the United States (R 43, 51). Mr. Steele was unaware that the Petitioner intended to bid for tax certificates

until he saw him in the audience immediately prior to the sale (R 42, 65).

During the proceedings in the trial court, the Petitioner never identified the particular constitutional rights that supposedly were violated. Although his Complaint contained a very lengthy list of constitutional provisions and statutes, he never made any attempt to apply any specific legal right to the factual situation (R 1-2). Instead, he spoke of the violation of "constitutional rights," without any attempt to define the specific rights which he felt were violated (R 2, 31-32, 59, 60, 80).

Central to the Petitioner's argument before this Court is the fact that all of the parties signed a pre-trial stipulation which provided that there were certain fact issues remaining to be litigated (R 27-34). The parties were required to enter into a pre-trial stipulation in an order entered on March 23, 1983. Rule 3.06(c)(8) of the General Rules of the United States District Court for the Middle District of Florida requires the parties to enter into a pre-trial stipulation which includes a concise statement of those issues of fact which remain to be litigated. The pre-trial stipulation in question was executed on June 24, 1983 (R 34). After the pre-trial stipulation was filed, the Defendants filed a motion for summary judgment with a supporting memorandum (R 35-56). The memorandum argued that there was no genuine issue of material fact (R 37-39).

The first full paragraph on page six does not accurately represent the record. Nothing of the sort was alleged in the Complaint. Also, the Petitioner failed to point out that the Circuit Court reviewed the record and ex-

pressly noted that it does not show any genuine issue as to any material fact (Appendix to Petition at A-3). The unpublished opinion further noted that neither the facts nor the cases supported the various arguments advanced by Mr. Amis.

SUMMARY OF ARGUMENT

Petitioner's first point is based upon the assumption that the District Court determined issues of fact in entering the summary judgment. In support of this position, Petitioner repeatedly points to the fact that all parties signed a pre-trial stipulation as to the fact issues that remained to be litigated. Subsequent to the pre-trial stipulation, which was entered pursuant to Court order, the motion for summary judgment was filed. As noted in the unpublished opinion of the Circuit Court, the record established that there were no genuine issues of material fact. Since the first point argued by the Petitioner is based upon an invalid assumption it forms no basis for the issuance of a writ of certiorari.

As his second point, Petitioner argues that he was entitled to a written explanation by the District Court for the entry of a summary judgment. Fed. R. Civ. P. 52(a) specifically provides that findings of fact and conclusions of law are not necessary in entering summary judgment. In any event, the Circuit Court reviewed the record and came to the conclusion that there were no genuine issues of material fact to preclude the entry of summary judgment. It found that neither the facts nor the cases supported Petitioner's arguments. The purported conflict

between the Circuits to which Petitioner's heading alludes is nonexistent.

ARGUMENT

I. The District Court Properly Entered A Summary Judgment In Favor Of Respondents Because The Record Shows That There Was No Genuine Issue Of Material Fact And That They Were Entitled To A Judgment As A Matter Of Law. (Responding To Point I In The Petition).

The entire argument advanced by the Petitioner in this section is based upon the assumption that the District Court resolved genuine issues of material fact in ruling upon the motion for summary judgment. As noted by the Circuit Court, there were no genuine issues of material fact. The Petitioner relies upon the pre-trial stipulation into which the parties entered pursuant to Court order. While it is true that the pre-trial stipulation indicated that there were genuine issues of material fact, Respondents suggest that it would have been very difficult to have convinced counsel for the Petitioner to enter into a stipulation that there were no genuine issues of material fact and that the Respondents were entitled to judgment as a matter of law. The pre-trial stipulation was filed prior to the motion for summary judgment and supporting affidavit. In the motion, Respondents argued that there were no genuine issues of material fact. If the Petitioner had somehow survived summary judgment, the issues to be tried would have been as stipulated in the document upon which Petitioner now relies. There is no requirement

that a party who intends to move for summary judgment at some future date must risk his entire position in a pretrial stipulation by stipulating that there would be no issues of fact to be tried under any circumstances.

This situation is analogous to the situation where there are cross-motions for summary judgment. In commenting upon the conditional nature of the assertion that there are no genuine issues of material fact in a summary judgment motion, the Fifth Circuit Court of Appeal has stated:

> Where there are cross-motions for a summary judgment, the losing party is not estopped by the mere filing of his motion for summary judgment from asserting that there are genuine issues of fact. A party's motion for summary judgment may be based on a theory of law which renders immaterial certain issues of fact which might be material to the opposing party's theory of law. A plaintiff, having lost on his motion for summary judgment, would be free to argue on review that there were issues of material fact which should have been resolved before deciding the case by summary judgment in favor of the defendant's theory of law.
>
> *Vetter v. Frosch*, 599 F.2d 630, 632 (5th Cir. 1979) (citations omitted).

Similarly, the Respondents in the instant case would have been free to argue the existence of issues of fact at trial if the motion for summary judgment had been denied.

Certainly the Respondents cannot argue with the assertion that the starting point for determining the correctness of the decision of the Court of Appeals is *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970), where this Court held that a summary judgment should not be entered where

the record shows material facts to be in dispute. The inquiry in this case ends with this starting point because the record has established that there are no material facts in dispute.

The remainder of the Petitioner's argument under this point is prefaced by the admission that it is technically irrelevant to this case. It is not only technically irrelevant to this case, it is totally irrelevant to this case. Mr. Amis, who is a frequent litigator and no stranger to this Court, filed another nuisance lawsuit. He filed a frivolous appeal from the summary judgment which was properly entered by the District Court. He now wastes this Court's time with a frivolous petition for certiorari.

II. There Is No Division In The Lower Courts As To Whether A District Court Judge Must Provide An Explanation For The Entry Of A Summary Judgment Under Circumstances Where The Reasons For The Entry Of The Summary Judgment Are Apparent On The Face Of The Record.

In his petition, the Petitioner fails to point out that the Circuit Court noted that although a statement of reasons is helpful and sometimes necessary for effective appellate review of a summary judgment, its absence will not require reversal where the decision is not ambiguous or unascertainable on a simple record. The decision in the instant case is not ambiguous and it is ascertainable on a simple record.

Although the Petitioner asserts in the heading to this portion of his argument that there is a division in the lower courts as to whether the trial courts must provide an explanation for the entry of summary judgment, he fails to direct this Court's attention to a single conflict

in the decisions. Although he cites *Hanson v. Aetna Life & Casualty Co.*, 625 F.2d 573 (5th Cir. 1980), for the principle that a District Court must in all cases explain the legal principles governing summary judgment, he failed to note that the Court also stated that findings of fact and conclusions of law are not necessary under the rules. The situation in *Hanson* was quite complicated, and the Court noted that it insisted on the District Courts providing their reasons for the entry of summary judgment only if the underlying holding would be otherwise ambiguous or unascertainable. *Id.* at 575. The holding in *Hanson* is not in conflict with the holdings in *Church of Scientology of California v. Cazares*, 638 F.2d 1272 (5th Cir. 1981), or *Fromberg, Inc. v. Gross Manufacturing Co.*, 328 F.2d 803 (9th Cir. 1964), in any way.

The Petitioner pretends that he has no idea why a summary judgment was entered against him. Although it is true that the District Court did not specifically state its reasons, the decision by the Circuit Court was quite clear. The Circuit Court reviewed the record in detail, and explained in its opinion that the record does not show any genuine issue of material fact. The Court further specifically advised the Petitioner that neither the facts nor the cases he cited supported his arguments. The Petitioner was not entitled under the rules or the law to an explanation for the entry of a summary judgment against him in the nuisance lawsuit which he filed. If he is entitled to an explanation, the explanation was supplied by the Circuit Court. The reasons for the entry of the summary judgment are clear both from the record and from the opinion of the Circuit Court.

CONCLUSION

The Petitioner has presented no legitimate reason for this Court to grant the petition for a writ of certiorari in this proceeding. Respondents request that the petition be denied.

Respectfully submitted,

GERALD W. PIERCE
Counsel of Record
HENDERSON, FRANKLIN,
STARNES & HOLT, P.A.
Post Office Box 280
Fort Myers, Florida 33902-0280
(813) 334-4121

KENNETH A. JONES
HUMPHREY, JONES & MYERS, P.A.
1625 Hendry Street
Fort Myers, Florida 33901
(813) 334-2722